No. 528

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

JAMES A. MOFFETT,

Petitioner,

v.

ARABIAN AMERICAN OIL COMPANY, INC., formerly known as CALIFORNIA ARABIAN STANDARD OIL COMPANY, INC.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner respectfully shows:

Your petitioner, James A. Moffett, hereby respectfully requests this Honorable Court to issue a writ of certiorari to the United States Court of Appeals for the Second Circuit to review the judgment of that Court, entered in the above-entitled cause on November 6, 1950, affirming a judgment of the United States District Court for the Southern District of New York, dated September 6, 1949, which was based on an order of the District Court setting aside the jury's verdict in favor of the petitioner in the amount of $1,150,000, and granting judgment for the respondent.

Jurisdiction

The judgment of the Court of Appeals for the Second Circuit was entered on November 6, 1950. The jurisdiction of this Court is invoked under Sections 1254(1) and 2101(c) of Title 28, United States Code.

Summary Statement of the Matter Involved

Petitioner, James A. Moffett (herein referred to as Moffett), a resident of New York City, is a man of wide experience in the foreign and domestic petroleum industry, having held, among others, the following positions, director of the Standard Oil Company of New Jersey from 1920 to 1933, Vice President in charge of foreign operations from 1924 to 1932, Executive Vice President from 1932 to 1933, Chairman of the Board of Bahrein Petroleum Company, Limited and California Texas Oil Company, Limited from 1936 to 1943 (150-152, 234, 3275).

He has also held important public office, including among others, Federal Housing Administrator (1934-1935) and has served by Government appointment on several Committees concerned with petroleum supplies in war and peace time (ff. 137-140, 149, 150, 171, 173).

In 1941 Moffett performed certain services at the special instance and request of Arabian American Oil Company, Inc., a Delaware corporation (herein referred to as Aramco), and Aramco agreed to pay him the fair and reasonable value thereof. In 1941 Aramco had been the owner, since 1936, under a royalty agreement with King Ibn Saud, of oil concessions concededly of enormous value located in the Kingdom of Saudi Arabia. Large scale production had not been commenced, however, hence the King's royalties up to 1941 were negligible.

Upon the outbreak of World War II in 1939, pilgrimages to the holy cities of Mecca and Medina, which had thereto-

fore been the principal source of the King's revenue, were cut off and the King found himself and his government in desperate financial straits (260).

To replace his lost revenue the King had, from time to time prior to 1941, demanded and received from Aramco advances against his future royalties totalling $6,800,000. In January 1941 the King notified Aramco that he would require an advance of at least $6,000,000 per year from it for the next five years, failing which Aramco would lose its concessions (ff. 249, 250, 258-260, 282).

In April 1941 Aramco employed Moffett to present its problem to the United States Government and to obtain relief for Aramco from the King's demands, and agreed to pay him the fair and reasonable value of his services (complaint, par. eighth, ff. 15, 248-252, 255-257, 261-263).

During the following months Moffett conferred in Washington, D. C. on numerous occasions with President Franklin D. Roosevelt, several of his cabinet officers and numerous other high-ranking government officials, stressing the strategic importance to the United States of the vast oil reserves in Saudi Arabia and urging that some way be found to insure their continued ownership by an American company (286-291, 346, 347, 354-357, 362, 368, 374-376, 426-428, 435-437, 494, 504-506, 541-553). Among others, Moffett discussed with the government officials in Washington as a means of providing financial assistance to Saudi Arabia, the granting of a direct government loan to Saudi Arabia using the oil in the ground as collateral. The President and his Secretary of State, Cordell Hull, agreed with Moffett as to the strategic value of the Saudi Arabian oil concessions but there was then no existing legislation which would permit a direct loan from the United States to Saudi Arabia (286-291, Ex. 23).

At the President's suggestion Moffett submitted on behalf of Aramco an offer to sell Arabian oil to the United States Government at a price lower than the world market

price in an amount sufficient to produce a royalty payment of $6,000,000 annually to King Ibn Saud. It was then found that the government contracts for fuel oil had already been let and no relief could be obtained in this manner (292-296, Ex. G, Ex. A).

Again at the suggestion of the President, Moffett conferred with Frank Knox, Secretary of the Navy, and discussed with him the advisability of the United States purchasing the Saudi Arabian oil fields as a naval reserve. Knox agreed with the strategic importance of acquiring the oil fields but reported back to the President that the navy had no funds available to purchase the oil fields (374-376, Ex. 16).

Finally at Moffett's urging that some way be found to save this vast oil reserve, the President in June 1941 sent word by Moffett to Jesse Jones, then Federal Loan Administrator, to tell the British representatives, who were then in Washington negotiating with Jones for a $425,000,000 loan, that it was the President's desire that the British Government take care of King Ibn Saud's financial requirements out of the proceeds of the loan (426-435).

Harry Hopkins followed this up by writing to Jones on June 14, 1941, which letter reads in part as follows:

> "The President is anxious to find a way to do something about this matter. I am enclosing confidential correspondence from the White House so you can see what goes on * * *" (Exhibit 11).

On July 18, 1941, three days before the British loan closed, the President wrote the following note to Jesse Jones:

> "Jess— 7/18/41
>
> Will you tell the British I hope they can take care of the King of Saudi Arabia. This is a little far afield for us.
>
> F. D. R." (Exhibit 29)

In the course of his negotiations Jones several times requested the British to furnish King Ibn Saud with financial assistance and finally showed them the President's note, at which time he repeated his previous requests (Exhibits 12, 28).

The day following the closing of the British loan Jones told Moffett that he had requested the British to take care of King Ibn Saud's financial requirements (493, 494). Upon being so advised by Moffett, Aramco exhorted Moffett to obtain a confirmatory letter from Jones which could be shown to King Ibn Saud and satisfy him that his needs would be taken care of by the British. Significant in this connection are the various inter-company memoranda passing between the executives of Aramco and the executives of its parent companies, The Texas Company and the Standard Oil Company of California (Exhibits 18, 19, 20, 21 and 35).

Upon being requested to write such a letter, Jones told Moffett he could not do so without first consulting the President (494, 504-506). After a lapse of several months Moffett again saw the President and asked him to direct Jones to write Moffett a confirmatory letter, and the President told Moffett he would do so (543, 545, 548, 551, 553).

Finally, on October 9, 1941 Jones wrote to Moffett, in part, as follows:

> "With further reference to your request that aid be provided by our Government for King Ibn Saud * * *.
>
> "I discussed the matter with the President and the Secretary of State. They were both sympathetic with the King's needs and regretted that our Government was not in a position to make him a loan, or an advance on oil royalties that may accrue to him through leases held by our company at some future date.

> "At the instance of the President and the Secretary I suggested to the British Ambassador that Britain consider providing King Ibn Saud with such funds as in its opinion were necessary to meet his requirements. The oil companies interested might, if they wanted to do so, work out some arrangement between the British Government and the King" (Exhibit 22).

Jones' letter to Moffett was turned over to Aramco which immediately communicated its contents to its field representative in Saudi Arabia (Exhibit 23), who in turn notified the Saudi Arabian Government that in future it must look to the British for financial assistance (Ex. 25). The British Minister in Saudi Arabia agreed with the position taken by Aramco (Exhibit 25). Thereafter, in fact, Aramco's field representative sat in on the financial discussions between the British Minister in Saudi Arabia and the Saudi Arabian officials and in November 1941 he reported back to Aramco "negotiations now under way regarding future British financing and feel our local difficulties over government financing have disappeared" (Exhibit 25); that the Saudi Arabian Government's plan to press for further advances from Aramco had been averted as a result of "your success Washington"; that relations between the government and Aramco were "now on very sound friendly basis"; and that the Saudi Arabian Government was "very grateful for help Company has given" (Exhibit 26).

Subsequent to obtaining the loan from the United States, the British advanced a total of $33,993,750 to Saudi Arabia during 1941, 1942 and 1943. Prior to 1941 the British had advanced to Saudi Arabia a total of $403,000 (Ex. 27).

Subsequent to 1941 Aramco made no further advances to Saudi Arabia, nor was it asked to do so (Exs. 25, 26). This was the relief Aramco employed Moffett to obtain for it (complaint, par. Eighth).

The jury found a verdict for Moffett in the sum of $1,150,000.

The District Court set aside the verdict and directed judgment for Aramco saying, in part:

> "* * * There is no proof on the part of the plaintiff * * * that he was the procuring cause, the efficient cause or the proximate cause of the result claimed by him * * *.
>
> "There is no proof that the British government in making the advances to the King of Saudi Arabia in 1941 and for several years following were motivated or influenced in any way by the granting of the collateral loan or by any representation or request made during the negotiations for the loan by any one representing the United States" (ff. 3269, 3270).

The District Court also held the contract of employment between Aramco and Moffett to be void as against public policy and advanced this as an additional ground for directing judgment for Aramco (3278).

The District Court also granted Aramco's alternative motion for a new trial, this part of the order to be effective, however, only in the event of reversal by the Court of Appeals of the order directing judgment for Aramco (3282, 3283).

The Court of Appeals for the Second Circuit affirmed the judgment of the District Court upon the ground that there had been a failure of proof and found it unnecessary to pass upon the public policy or the new trial questions.

Questions Presented

1. Where there is substantial, positive, direct evidence from which a jury may properly draw an inference of the existence of a fact, may a District Court Judge deprive

the prevailing party of a verdict returned by the jury on the ground that there is no proof of the existence of the fact which the jury inferred?

2. Whether an employment contract under which the individual employed is to present the employer's problems on the merits to the President of the United States and other members of the Executive Department, with a view to securing relief for the employer, is against public policy.

3. Whether the District Court's conditional alternative order granting a motion for a new trial should be reversed, being based upon errors of law.

Specifications of Errors

The United States Court of Appeals for the Second Circuit erred:

1. In affirming the judgment of the District Court on the ground that there is no proof that Moffett was the procuring cause, the efficient cause, or the proximate cause of the result claimed by him.

2. In affirming without review the judgment of the District Court which held the contract of employment to be void as against public policy.

3. In affirming without review the order of the District Court which granted a new trial conditioned on reversal of the other portions of the order granting judgment to Aramco, notwithstanding the jury's verdict for Moffett.

Reasons Relied Upon for Allowance of the Writ

I. In affirming the judgment of the District Court, the Court of Appeals for the Second Circuit is in direct conflict with the applicable decisions of this Court relating to the minimum meaning and application of the Seventh Amendment to the Constitution.

Tennant v. *Peoria Railway Co.*, 321 U. S. 29;
Story Parchment Co. v. *Patterson Parchment Paper Co.*, 282 U. S. 555;
Lavender v. *Kurn*, 327 U. S. 645;
Galloway v. *U. S.*, 319 U. S. 312.

All of the basic facts from which inferences could properly be drawn that Moffett was the procuring, efficient and proximate cause of the relief obtained by Aramco were before the jury in the form of competent and uncontradicted evidence.

A reading of the testimony and uncontradicted documentary evidence cannot fail to impress that the verdict of the jury was not only warranted by the evidence but the only reasonable one it could have found.

Truly, it can be said, that the action of the District Court in this case, if allowed to stand, sounds the death knell of the American jury system. No longer can a litigant rest his cause with a jury of his peers. As matters now stand, in place of the mature deliberate judgment of twelve jurors to which he is entitled under the Constitution, he must accept the decision of one judge, not omniscient, and no more honest, no more conscientious, no more experienced in the ways of life, than any one of the twelve jurors whose composite reasoned judgment is cast aside.

This case is presented to this Court as one of paramount public importance. The history of the steady and perni-

cious encroachment of the judiciary upon the fact finding province of the jury is traced and set forth in detail in the dissenting opinion in *Galloway* v. *U. S.*, 319 U. S. 312. The warning therein contained is clear and unmistakable. It is the duty of this Court now to restore the American jury to its historic and constitutional role of sole and exclusive judge of the facts and the inferences to be drawn therefrom.

Significant of the low estate to which American juries have fallen in the opinion of at least one member of the judiciary is the recent article written by the Honorable Jerome Frank entitled "Something's Wrong With Our Jury System" published in the December 9, 1950 edition of Collier's Magazine. Judge Frank refers to jurors as "* * * amateurs entrusted with the use of legal rules * * *." Judge Frank's opinion of juries is certainly at variance with the opinion of Thomas Jefferson on the same subject, quoted in the same article, "the best of safeguards for the person, the property and the reputation of every individual." Judge Frank wrote the opinion of the Court of Appeals for the Second Circuit in this case. Any opinion on the validity of a jury's verdict written by a Judge who has publicly expressed himself on that subject as has Judge Frank, cries out for review by this Court.

In finding as it did, that there was no proof to support Moffett's claim, the District Court ignored entirely the numerous pieces of documentary evidence offered by Moffett and the very plain inferences to be drawn therefrom. In affirming the judgment of the District Court, the Court of Appeals for the Second Circuit did likewise. This Court has held, time and again, that it is within the sole and exclusive province of the jury to draw inferences from facts in evidence.

II. The District Court, reached the conclusion of law that the contract in question was contrary to public policy.

The sole factual basis for this conclusion advanced by the District Court is that Aramco employed Moffett not only because he was a recognized expert in matters pertaining to the oil industry but because of his "close relation" with the President (3276, 3277).

It can not be argued that the fact of Moffett's long standing friendship with the President, standing alone, is sufficient to invalidate the contract. It seems hardly worthy of comment that in selecting a man to present its problem to the Government, Aramco should choose a man who in addition to his acknowledged qualifications, enjoyed as well the friendship and respect of the President. It would be difficult to imagine Aramco selecting a man for such a task who was distrusted or unknown by the President.

This Court has consistently held that it is a matter of great public concern that freedom of contract be not lightly interfered with, and if it appears that enforcement of a contract will not be followed by injurious results, what the parties have agreed to ought not to be struck down. Detriment to public interest will not be presumed where nothing sinister or improper is done or contemplated. *Hobbs* v. *McLean*, 117 U. S. 567 (1886); *Valdes* v. *Larrinaga*, 233 U. S. 705 (1914); *Steele* v. *Drummond*, 275 U. S. 199 (1927); *Frost & Co.* v. *Coeur D'Alene Mines Corp.*, 312 U. S. 38 (1940).

The contract here contemplated nothing secret, nothing unconscionable, nothing detrimental to the interests of the United States. On the contrary, the contract contemplated the presentation of the facts on the merits, such a presentation was made, both parties to the contract premised the request for the desired action on the public interest involved, and the desired action was taken after it was determined by the President of the United States, members

of his Cabinet and other high ranking Government officials that such action was within the public interest (Ex. A, Ex. I, EE, Ex. 13, Ex. 16).

If the action of the District Court is allowed to stand without review and/or reversal, Moffett has, in the eyes of his business associates, been convicted without opportunity for judicial review of engaging in a circumvention of the laws of the United States by subterfuge and secrecy.

III. The Trial Court in granting the alternative motion to set the verdict aside and grant a new trial stated that "I will only make a *pro forma* disposition * * * because I have to do it" (ff. 2780).

This Court in the case of *Montgomery Ward & Co.* v. *Duncan,* 311 U. S. 243, laid down a series of rules for the guidance of the District Courts and the Circuit Courts of Appeals in handling alternative motions for a new trial.

Upon hearing this case and reversing the Circuit Court of Appeal, this Court should consider the action of the District Court and clarify its previous rulings concerning the granting and reviewability of alternative motions for a new trial when the order granting such a new trial in the alternative is conditioned upon a reversal in the Circuit Court of Appeals on the other points involved in the case.

The District Court in this case committed a clear abuse of its discretion as well as errors of law in granting the alternative motion for a new trial. On those grounds its action is reviewable. *Fairmont Glass Works* v. *Cub Fork Coal Co.,* 287 U. S. 474, *Pettingill* v. *Fuller,* 107 Fed. 2d 933 (C. C. A. 2). If such action by the District Court is not reviewable until after Moffett has been put to the time and expense of a new trial, the stated purpose of the holding in the *Montgomery Ward* case will be circumvented.

Only by an appellate review of the alternative order granting a new trial at the time of review of the other parts of the order of the District Court can this major obstacle to speedy and efficient Federal litigation be removed.

It is respectfully submitted that this petition for a writ of certiorari should be granted and the writ issued in manner and form as may be just, necessary, and proper.

Respectfully submitted,

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Petitioner,

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BRIEF IN SUPPORT OF PETITION

Opinions of the Courts Below

The opinion of the District Court is reported at 85 Fed. Supp. 174 and the opinion of the Court of Appeals for the Second Circuit is reported at 184 Fed. (2d) 859.

ARGUMENT

I

The finding of the jury that Moffett was the procuring cause of the relief obtained by Aramco was supported by the evidence in the case.

Moffett's claim is stated simply and clearly in paragraph Eighth of the complaint (f. 15):

> "The defendant herein (Aramco) retained the services of the plaintiff (Moffett) to protect its oil concessions in the Kingdom of Saudi Arabia and obtain relief for the defendant from the financial demands of the said King of Saudi Arabia, and promised to pay plaintiff the fair and reasonable value of his services." (Parenthetical matter supplied.)

The testimony and documentary evidence are prolific and uncontradicted that:

1. Moffett did go to see the President in Washington at the request of Aramco and presented Aramco's problem to him (ff. 286-291).
2. The President instructed Harry Hopkins to see to it that in negotiating the British loan, Jesse Jones request the British to take care of the King's financial requirements (433).

3. Hopkins delivered the President's message to Moffett with instructions to follow it up with Jones (435).

4. Moffett delivered the President's message to Jones, who was at the time negotiating with the British and Jones said he would "bear it in mind" (435-437).

5. Hopkins wrote to Jones that "the President is anxious to find a way to do something about this matter * * *" (Ex. 11).

6. The British negotiators were requested repeatedly by Jesse Jones during the negotiations for the loan to have the British government take care of the financial needs of the King of Saudi Arabia and these requests were made at the instance of the President and the Secretary of State (Exs. 12, 22, 28).

7. The President wrote to Jones on July 18, 1941 expressing his desire that the British should take care of the King (Ex. 29); and Jones showed this letter to the British negotiators and repeated his previous requests (Ex. 28).

8. The British loan was closed on July 21, 1941 (Ex. FF).

9. Aramco pressed Moffett to obtain permission to inform the Saudi Arabian Government of the action taken by the United States Government in order to get credit for obtaining the British Advances, and thus be relieved of the King's demands upon it (Exs. 18, 19, 20, 21, 35, ff. 503-506).

10. Jones, at the direction of the President, wrote the letter of October 9, 1941 to Moffett for one purpose only and that was to give Aramco something in writing to show to the King and convince him that Aramco was responsible for the British aid (Ex. 22, f. 494, ff. 504, 505, 506, 543, 545, 548, 551, 553).

11. Aramco told the Government of Saudi Arabia and the British Minister to Saudi Arabia of Jones' requests to the British negotiators (Exs. 23, 25).

12. The Saudi Arabian Government and the British Minister in Saudi Arabia acknowledged the soundness of Aramco's position that in future Saudi Arabia should look to Britain for financial assistance and that Aramco was to receive credit for obtaining the British advances (Exs. 25, 26).

13. The representatives of the Saudi Arabian Government and the British Minister and Lebkicher, the representative of Aramco thereafter conferred together on future British financial assistance to Saudi Arabia (Exs. 25, 26).

14. The British advanced a total of $33,993,750 to Saudi Arabia during the years 1941, 1942 and 1943 as against $403,000 prior to 1941 (Ex. 27).

15. Aramco was relieved of the necessity of meeting the King's demands for financial assistance and Aramco retained its concessions and still retains them and maintains the friendly relations with the King and the Saudi Arabian Government which it feared it would lose if Moffett were unsuccessful in his mission (Exs. 25, 26).

16. Aramco obtained the relief it employed Moffett to obtain for it (Complaint, par. eighth, f. 15).

Yet, in spite of the foregoing evidence, much of it produced from the files of Aramco, the District Court found "there is no proof on the part of the plaintiff * * * that he was the procuring cause, the efficient cause or the proximate cause of the result claimed by him * * *" (ff. 3269, 3270). It is no overstatement to say that the finding of the District Court and its affirmance by the Court of Appeals does violence to every known rule of logic and reason.

The Law as to Inferences

All the basic facts from which the jury might infer that Moffett was the motivating cause of the British advances to Saudi Arabia as a result of which Aramco obtained the relief it employed him to obtain for them, were before the jury in the form of competent and, for the most part, uncontradicted documentary evidence. The inferences to be drawn from these basic facts were within the sole province of the jury. Where, as in this case, the basic facts are before the jury in competent form, no court can ignore a finding of the jury based upon inferences properly and reasonably drawn from those facts and substitute therefor its own opposite conclusion.

Tennant v. *Peoria Railway Co.*, 321 U. S. 29;
Story Parchment Co. v. *Patterson Parchment Paper Co.*, 282 U. S. 555;
Lavender v. *Kurn*, 327 U. S. 645;
Galloway v. *U. S.*, 319 U. S. 372.

The proof is overwhelming in this case that Moffett was the procuring cause of the relief obtained by Aramco.

II

The contract is not against public policy.

One of the bases for the order of the District Court setting aside the verdict and entering judgment for the defendant was its conclusion of law that the contract in question was contrary to public policy.

The facts upon which the District Court based this conclusion of law are set forth in his memorandum opinion:

> "I can't help but feel that on plaintiff's story alone he was chosen by his associates as a man, of course

> expert in the field; but by and large as much if not more for his close relation with the President; one who, if any one could, might obtain relief for the defendant and its associates in their hour of peril from the man who might be able to help them" (f. 3276).

Analysis indicates that the sole factual basis, upon which the District Court arrived at its conclusion, is that one reason why Aramco employed Moffett was because of his "close relation" with the President. The question before this Court is this: Is it contrary to public policy for an individual to contract to present a problem on the merits to one in authority with whom he enjoys a "close relation"? If the answer is affirmative, then no member of the Bar may be employed on a legal contractual basis to present a case to any Judge who happens to be a friend.

Assume that Moffett was employed because he was a well-recognized expert in this particular field and because also he had a "close relation" with the President. There was certainly nothing sinister in that relationship. Moffett was on friendly terms with the President. The important factor in that relationship, however, the one which natural inference would indicate motivated the employment, was that Moffett was accepted as an expert on foreign oil. He had theretofore been called upon by the President for advice, counsel, and public service in the petroleum field. Indeed, it is difficult to conceive of Aramco employing a man for this task who was unknown or distrusted by the President.

It was only natural, therefore, to assume that his presentations on a subject having to do with oil would be treated with a degree of confidence and respect. There is no evidence of record, even as presented by Aramco, that Moffett was selected to exert influence; and the suggestion on cross examination to Moffett that he was employed to use influence was categorically denied (f. 800).

So much for the relationship. Now as to the presentation:

(1) Nothing was concealed or kept secret. Moffett told the President: first, that he came in the interests of Aramco (288); second, that he expected to be paid by it; and, third, that the objective was the retention of vitally important oil concessions by Aramco without further prohibitive advances to the King (289-291).

(2) The problem was presented as one consonant with the public interest of the United States. We were then to all practical purposes at war; although war had not yet been formally declared by the United States. Both Aramco and Moffett stressed the public interest involved. The presentation was factual and stressed: that it was necessary to preserve the integrity of Saudi Arabia; that that country was anti-Axis; that it enjoyed a tremendous sphere of influence; and that it would be desirable, from a military standpoint, to protect oil concessions of the American-owned Aramco in that area (Exs. A, I, EE).

Going a step further, the problem was considered by our Government only from the standpoint of the effect on public interest. This was the viewpoint of the President, the Secretary of State, and the Secretary of the Navy (Exs. 13, 16).

This Court has consistently held that it is a matter of great public concern that freedom of contract be not lightly interfered with, and if it appears that enforcement of a contract will not be followed by injurious results, what the parties have agreed to ought not to be struck down. Detriment to public interest will not be presumed where nothing sinister or improper is done or contemplated. *Hobbs* v. *McLean*, 117 U. S. 567 (1886); *Valdes* v. *Larrinaga*, 233 U. S. 705 (1914); *Steele* v. *Drummond*, 275 U. S. 199 (1927); *Frost & Co.* v. *Coeur D'Alene Mines Corp.*, 312 U. S. 38 (1940).

The contract here contemplated nothing secret, nothing unconscionable, nothing contrary to the interests of the United States. On the contrary, the contract contemplated the presentation of the facts on their merits, such a presentation was made, both parties promised the request for the desired action on the public interest involved, and the desired action was taken after it had been determined by the Chief Executive of the United States, members of his cabinet, and other high ranking Government officials that such action was within the public interest.

The aura of secrecy which enshrouds negotiations involving "influence" is entirely lacking in this case. Under these circumstances the cardinal rule that the law favors the legality of a contract must prevail.

The respondent seriously urged on appeal that Moffett's activities involved a circumvention of the laws of the United States by subterfuge and secrecy. The Circuit Court of Appeals in affirming the order of the District Court failed to consider the question of public policy and thereby deprived Moffett of his right to impartial judicial review of the order of the District Court and the allegations which have damaged his reputation among his business associates.

III

The District Court committed errors of law and abused its discretion in granting *pro forma* Aramco's motion for a new trial and the Court of Appeals was in error in failing to review the matter.

The District Court granted Aramco's alternative motion to set aside the verdict and grant a new trial conditioned however upon the Court of Appeals reversing its other holdings. The District Court's action in this regard constituted an arbitrary action and abuse of its discretion

as evidenced by the following statements of the Trial Judge:

> "The Court: * * * I do not intend to go into it too deeply, that is, the motion to set the verdict aside and grant a new trial, because if I decide the first one, I will only pick one thing—
>
> * * * * *
>
> "The Court: If I decide that you are entitled to your first motion, I will only make a *pro forma* disposition of the second one, because I have to do it" (ff. 2779, 2780).

This Court in the case of *Montgomery Ward & Company* v. *Duncan,* 311 U. S. 243, laid down a series of rules for the guidance of the District Courts in considering alternative motions for a new trial. It is there specifically provided that such alternative motions for a new trial should be considered and ruled upon in order to simplify and abbreviate the processes of litigation in the Federal Courts.

In the *Montgomery Ward* case it was stated at page 254:

> "Should the trial judge enter judgment *n. o. v.* and, in the alternative, grant a new trial on any of the grounds assigned therefor, his disposition of the motion for a new trial would not ordinarily be reviewable, and only his action in entering judgment would be ground of appeal. If the judgment were reversed, the case, on remand, would be governed by the trial judge's award of a new trial."

The Court of Appeals in reviewing the order of the District Court did not consider the question of a new trial in this case. However, it is clear that upon hearing the case

and reversing the Court of Appeals, this Court should also consider and clarify its previous ruling concerning the reviewability of an alternative order granting a new trial conditioned upon a reversal by the Court of Appeals of the order entering judgment.

Only by such a clarification and holding that an order granting a new trial conditioned upon reversal of the judgment is reviewable by the Court of Appeals at the same time it reviews the other questions involved can the true purpose of the holding in the *Montgomery Ward* case be fulfilled. A clear example of the need for such a clarification and holding is peculiarly evident in this case, because if this Court should reverse the Court of Appeals in its action of affirming the District Court's judgment for Aramco, Moffett would be required to return to the District Court and incur the expense and time involved in a new trial and only after a judgment in that Court in favor of Aramco could he secure review by the Circuit Court of Appeals on the Trial Court's action in granting a new trial in the first instance.

It would indeed be a travesty on Justice were Moffett to be put to a new trial merely because of a "pro forma" ruling of the very judge whose findings had otherwise been reversed in this Court!

The clear injustice of preventing the Court of Appeals from reviewing in the first instance the action of a Trial Court in granting a new trial is evidenced in the case of *Pettingill* v. *Fuller,* 107 F. (2d) 933, where a jury's verdict in favor of the defendant was set aside and a new trial granted, and after the second trial, resulting in a jury's verdict and judgment for the plaintiff, the Circuit Court of Appeals reversed the action of the District Court in granting the new trial in the first instance and reinstated the verdict of the jury in the first trial.

The District Court in this case, in addition to the violent abuse of its discretion in its perfunctory handling of the

motion for a new trial, also committed errors of law by reliance on evidence erroneously admitted, excluding from its consideration documentary proof in evidence, misinterpretation of the issues, reliance upon negative evidence to the exclusion of affirmative evidence, and upon oral evidence contradicted by documentary proof.

The granting of such an order is reviewable if the District Court abused its discretion in doing so, or if the action of the District Court is based upon errors of law.

Fairmont Glass Works v. *Cub Fork Coal Co.*, 287 U. S. 474;
Marshall's U. S. Auto Supply Co. v. *Cashman*, 111 F. 2d 140, 141;
Pellingill v. *Fuller* (*supra*).

It is respectfully submitted that the petition should be granted and the writ issued.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 528.

JAMES A. MOFFETT,

Petitioner,

v.

ARABIAN AMERICAN OIL COMPANY, INC., formerly known as California Arabian Standard Oil Company, Inc.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE RESPONDENT IN OPPOSITION.

JOSEPH M. PROSKAUER,
Counsel for Respondent.

Of Counsel:
ROWLAND STEBBINS, JR.,
PHILLIP W. HABERMAN, JR.

[315]

THE COURT PRESS, N. Y. C.

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IN THE

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JAMES A. MOFFETT,

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v.

ARABIAN AMERICAN OIL COMPANY, INC., formerly known as California Arabian Standard Oil Company, Inc.,

Respondent.

BRIEF FOR THE RESPONDENT IN OPPOSITION.

Opinions Below.

The opinion of the District Court (Conger, *Dt. J.*) on granting defendant's motion for judgment and conditionally awarding a new trial is reported in 85 F. Supp. 174. The opinion of the Court of Appeals (A. N. Hand, Chase and Frank, *Ct. JJ.*) on affirming the order and judgment of the District Court is reported in 184 F. 2d 859.

Jurisdiction.

The decision of the Court of Appeals was rendered November 6, 1950 (p. 1107). The petition for a writ of certiorari was filed on February 3, 1951. The

jurisdiction of this Court is invoked under the provisions of §§ 1254(1) and 2101(e) of Title 28, U. S. C.

Questions Presented.

These affect matters of three kinds: (1) the stated ground of affirmance in the Court of Appeals, (2-4) other grounds for affirmance, one of which (4) was assigned by the District Court, and (5) the conditional order for a new trial. The questions are:

1. Whether the Court of Appeals and the District Court properly held that without plaintiff's hearsay testimony there would be insufficient evidence to establish the gravamen of his case, *viz.*: that the United States Government in 1941, as a *sub rosa* condition of a written loan agreement, orally required the Government of Great Britain to assume the budgetary requirements of the King of Saudi Arabia for the duration of World War II.

2. As a related question (not reached below), whether plaintiff could rely on evidence of British subventions in attempting to prove compliance with an alleged hiring to get direct American aid, where his own proof showed that he and the defendant regarded even a limited British grant as a serious threat to its standing and interests in Saudi Arabia.

3. As a further question (not reached below), whether under New York law plaintiff could claim a special hiring by the defendant to protect its Arabian concession, when plaintiff was a full-time employee of defendant's corporate parents and affiliates whose interests were deeply involved along with defendant's.

4. As a further question (not reached by the Court of Appeals), whether the District Court correctly held "on plaintiff's story alone" (f. 3276) that any such contract as plaintiff tried to prove would be against public policy.

5. Whether the District Court properly granted a conditional order for a new trial, effective only in case of reversal (f. 3299), on the ground that the verdict was against the weight of the evidence (f. 3298), as procedurally prescribed in *Montgomery Ward* v. *Duncan,* 311 U. S. 243. This question is in no event reviewable on appeal (*Fairmount Glass Works* v. *Cub Fork Coal Co.,* 287 U. S. 474, 481).

Statute Involved.

No statute is involved in this case.

Statement of the Case.

The petition and supporting brief nowhere state, challenge or criticize the ground of decision below. Petitioner seeks to review in this Court a case bottomed on the theory that he procured the United States Government to *request* the British Government to support the King of Saudi Arabia.

That, however, is not the case he presented either to the District Court or to the Court of Appeals, as both Courts have expressly declared. In the Courts below, petitioner claimed to the exclusion of all else that the United States Government *by contractual requirement* obligated the British to take care of the King "as a part of the consideration" (f. 73) for the $425,000,000 loan of July 21, 1941.

Thus, his complaint so alleged (ff. 16, 23). His evidence concerning the value of his alleged services went exclusively on that hypothesis (f. 1572), and he finally went to the jury, and later sought to defend its verdict, upon the following unequivocal statement:

> "So that there may be no question about this, our claim is that as a result of Mr. Moffett's services in Washington the British were *required* to take out of that $450,000,000 loan whatever Ibn Saud needed and pay it over. That is our claim, and that is what we maintain was done; no two ways about it" (ff. 2565, 2835-6; and see the opinion of Conger, *Dt. J.*, at ff. 3248-9, 3265).

Thus the Court of Appeals in language nowhere challenged by petitioner restates the measure by which petitioner there elected to be bound (pp. 1107-8):

> "Plaintiff admits that, in order to recover he had to prove that, as a result of his efforts, the United States, as a condition of the loan it made to the British government, required that government to assume the budget requirements of the King of Saudi Arabia. The record contains no admissible evidence from which it can reasonably be inferred that the United States imposed such a requirement."

We shall show that there is no evidence whatever to support either the case petitioner presented below or the totally dissimilar case he seeks to have here reviewed. We shall further show other grounds, including public policy, that would bar recovery even if the case were otherwise proved. We shall finally

show that the conditional order for a new trial was fully warranted.

We omit extended reference to testimony given on defendant's behalf. The questions affecting the correctness of the final judgment arise solely on plaintiff's evidence. Defendant's evidence is cited for its bearing on the conditional order for a new trial.

The facts are stated in conjunction with the points to which they are severally appropriate.

I.

The Court of Appeals for the Second Circuit has unanimously affirmed an order of the District Judge setting aside the verdict and dismissing the complaint.

The only ground considered in the opinion of the Court of Appeals was that there was no evidence which justified a submission of the case to the jury. Four judges below have so found.

The only question therefore raised on this petition for certiorari is the correctness of this holding, a question which involves no "special and important reasons" for the allowance of a writ (Rule 38, subd. 5).

II.

There was no evidence justifying the submission of the case to the jury.

A. There is no evidence of any condition or obligation imposed on or assumed by the British to take care of the King of Saudi Arabia.

The United States insisted that the $425,000,000 loan be completely secured by collateral (f. 1425).

It was given to provide desperately-needed dollars with which to pay for war material bought in this country (f. 1421), yet Moffett would have it that President Roosevelt decided to "help" Britain with dollars by commanding her to "take out of that $450,000,000 loan whatever Ibn Saud needed and pay it over."

It was evidenced by a formal written agreement, which recites that the loan is made "upon the terms and conditions hereinafter set forth", and that its purpose is "to set forth and define the terms and conditions of such loan and the rights and obligations of the parties between themselves" (f. 3202), yet Moffett would have it that there was an oral understanding contrary to the plain language of this formal agreement, in which there is no reference whatever to Saudi Arabia (f. 3203).

There is no evidence that any British representative was under the impression that Britain was under any obligation to the United States to make advances to Ibn Saud. (Indeed, Great Britain has formally taken the position that it did not act under any such compulsion [Ex. HH, ff. 3205-3208].)

Nor is there any legal evidence that the American representative, Jesse Jones, ever said anything to the British about any such requirement. Jones' testimony, taken by plaintiff and read in evidence in plaintiff's case, follows (f. 1423):

> "Q. Did you ever state in words or in substance to any representative of the British Government that it was a term or condition of the collateral loan that the British should furnish aid, whether in money or supplies, to Saudi Arabia? A. No.
>
> Q. Did any representative of the British Gov-

ernment ever tell you in words or in substance that Great Britain agreed to give any aid, whether in money or supplies, to Saudi Arabia? A. No.

Q. Did you ever tell the plaintiff, James A. Moffett, or anyone else, in words or in substance, that you had stated to any representative of the British Government that it was a term or condition of the collateral loan that the British should furnish aid to Saudi Arabia? A. No."

Frank, *Ct. J.*, correctly observes (p. 1108) that there is only one item of testimony in the entire record "which, had it been admissible, might conceivably have been sufficient" to take the case to the jury, namely: plaintiff's testimony that in September, 1941, he had a talk with Jesse Jones wherein Jones

> "told me that the collateral loan had been concluded and that he had spoken to the British about it, and it was understood that they were to take care of the King" (f. 506).

Of this "evidence", Frank, *Ct. J.*, says (p. 1109):

> "[Defendant's] objection was well taken. The testimony was hearsay so far as it purported to report anything said or done by the British representatives."

That holding is nowhere challenged in the petition and supporting brief. The offending item is not even directly cited on this application. But petitioner is still unable to state his claim without relying on an indirect reference thereto and trying to piece it out with other hearsay and non-existent testimony. Thus:

> (1) He says (p. 4) that in June, 1941, the President "sent word" via Moffett to Jones that

he wanted the British to take care of the King (citing ff. 426-435). But all that the record contains is Moffett's hearsay testimony of what he says the late Harry Hopkins told him the late President had said and defendant's objection thereto on the ground of hearsay. The District Court ruled that this hearsay was not proof of any fact (ff. 2533-5).

(2) He then says (p. 5, citing ff. 493, 494) that the day following the British loan Jones told him that he had "requested" the British to take care of the King. But according to Moffett's testimony, all Jones said was, "Keep your shirt on, you will be hearing from me in a few days", and that was the end of the conversation (f. 494).

(3) He then says (citing ff. 504-6), that he later asked Jones to write a letter confirming the alleged understanding with the British, but Jones said he could not do so without consulting the President. It will be found on consulting the folios cited that this is merely an oblique reference to the testimony condemned as hearsay by the Court of Appeals.

(4) He then cites a conversation testified to by Moffett (ff. 543-553), wherein Moffett allegedly told the President that Jones had told the British it was "up to them" to take care of the King but would not confirm it in writing, to which the President allegedly replied that he would tell Jones to write. Petitioner fails to note, however, that an objection on the ground of hearsay was sustained and the conversation was then admitted for the limited purpose of proving that Moffett had talked with the President (ff. 549-551).

Petitioner is driven to rely on such hearsay "evidence", rejected by both Courts below in rulings which petitioner nowhere questions, because of the total absence of any legal proof to sustain his claim. Four judges have failed to find such proof in the record.

The Courts below correctly summed up what the evidence shows actually happened between the President, Jesse Jones and the British loan negotiators in Washington. Thus the Court of Appeals says (184 F. 2d, at 860):

> "We think the trial judge correctly summed up the evidence as follows: 'It seems to me that plaintiff's evidence proved nothing more than that the President and also the Secretary of State were aware of the needs of the King of Saudi Arabia and were sympathetic; that the various methods to aid the King suggested by the defendant and also by the President were not possible, such as help through Lend-Lease or a direct loan, an advance on oil royalties, a sale of oil to the Navy and a purchase of oil in the ground from the King. These methods of helping the King being unavailable, all we have left is a *hope* by the President that the British "can take care of the King" [quoted from the President's note of July 18, Ex. 29*]; a *suggestion* by Jesse Jones to the British representative "that Britain *consider* providing King Ibn Saud with such funds

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* The note read:

"Jess—

Will you tell the British I hope they can take care of the King of Saudi-Arabia. This is a little far afield for us!

FDR"

as in its opinion were necessary to meet his requirements" [Jones' October 9 letter, Ex. 22, at f. 2948]; or the showing of the President's note by Jesse Jones to the British representatives, prior to closing the loan, with the *request* that the British Government furnish the King of Arabia with whatever funds it felt were desirable and necessary [Jones' August 6 memorandum to the Secretary of State, Ex. 28, at f. 2980]. Whether it be a hope, a request or a suggestion, it in no way approximates the claim of the plaintiff as set forth in his complaint and as urged on the trial.' " (Italics from original.)

B. There is no evidence that Moffett caused what Jones actually said to the British, nor that they in turn were motivated by what he said.

Having thus decided that there was no proof of any requirement, it was unnecessary for the Courts to inquire whether Moffett was the procuring cause of the expressions of sympathetic interest conveyed by Jones to the British.

The record, however, shows that far from seeking British aid, Moffett feared it, never claimed that he was hired to get it, never asked for it, tried to prevent it, and lamented when it was finally given.

Thus Moffett testified (f. 251) and his counsel declared (f. 68) that the hiring was to get the *American Government* itself to finance the King of Saudi Arabia. There is no testimony that anybody asked Moffett to seek aid from any other source.

His whole unsuccessful endeavor was American aid. He admitted that he had never suggested to the Presi-

dent (ff. 291, 496) or to anyone else that advances should be made by the British (ff. 1100-1102).

In his first interview with the President he was requested to see whether

> "they could get a lend-lease loan or a loan using the royalty oil as collateral * * * I discussed it with the President, but it could not be done" (ff. 692-3).

His next proposal was:

> "We propose that the United States Government purchase from the Saudi Arabia Government finished petroleum products to the value of six million dollars annually for a period of five years" (f. 3036).

In that memorandum which he presented there was this caveat:

> "Any British advances should be on a political and military basis and should not involve their getting any oil from this concession" (f. 3038).

He admitted that he "never succeeded in doing * * * exactly what they asked me to do" (ff. 689-92).

He had for years been disturbed over the political situation regarding the Arabian concession.* He wrote, "the British will not miss an opportunity to muddy up our concession if possible with the King" (Ex. N, f. 3114).

Thus he had to admit (ff. 1122-3) that he never knew about the July 18 note (Ex. 29, quoted in foot-

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* His counsel stated on his opening that defendant's officials were "worried about the huge advances that the British were making, and their great fear was that the British would gain a foothold in Saudi Arabia * * *" (f. 82).

note on page 9 hereof), in which the President expressed the hope that the British could take care of the King, and had nothing to do with its writing. And Jones, the addressee of the note, testified in plaintiff's case that he got the President to write the note because he was being "pestered" by Moffett and others to grant direct American aid, and wanted to show that his decision *not to give it* had the approval of the President (ff. 1386-7, 1403, 1506-7).

Three days later the collateral loan agreement was signed (ff. 461, 1420). The petition says (p. 5) that Jones thereupon reported to Moffett that he had requested the British to take care of the King. The record contains no testimony of any such report. It does, however, show that Moffett thereupon dispatched a long letter (Ex. I) to Jones, arguing *against* indirect aid (f. 3075) and in favor of "direct and immediate aid by the United States Government to the King" (f. 3071).

This appeal failed. Jones wrote in reply (Ex. 17, f. 2923):

> "Further and due consideration has been given to the matter of aid to the King of Saudi Arabia.
>
> It is clearly the responsibility of the British to furnish the King with such aid as *in their opinion* he is entitled to and they feel would be helpful to their cause.
>
> We would like to help the California Arabian Standard Oil Company, but there is no way that we can do it unless they wish to borrow money on a properly secured note." (Italics ours.)

Moffett lamented in reply (f. 3176):

> "I regret that it is necessary to go through the British."

All Jones ever did was to show the President's July 18th note to the British negotiators in Washington and suggest that their government consider furnishing the King with whatever funds they felt necessary or desirable (ff. 2948, 2980).

From this no jury is entitled to infer or speculate that Moffett was the procuring cause of what the President, Jones and the British Government in London did, and beyond this that the aid given by the British to Saudi Arabia resulted, in the language of his counsel, from an agreement that "*required the British* to take out of the $450,000,000 loan whatever Ibn Saud needed and pay it over".

This failure of proof is highlighted by the historical background which showed that in its own interest Great Britain had to take care of Saudi Arabia, no matter what might be America's "hope". Secretary Hull had written that an increase of £500,000 in their 1941 subsidy

> "would be a small price for them to pay for Ibn Saud's support and influence in this vital Near Eastern Area" (Ex. 13, f. 2906).

Moffett admitted that this was historically correct (f. 1103).

The historical facts of which the Court may take judicial notice were testified to by Dean Landis, who had been President Roosevelt's chief representative in the Middle East.

France had fallen; Britain stood alone; the Nazis had taken Greece and Crete; the Mediterranean was closed; the British were locked in battle in the Near East and were there totally dependent on oil from the countries at the head of the Persian Gulf; the Moslem

world was in ferment and turning toward the Axis powers. The only remaining route to the Near East was around the Cape of Good Hope and up through the Red Sea or the Persian Gulf. Arabia commanded both. Ibn Saud thus dominated this crucial area, and Britain could not afford to have him totter or become disaffected.

For instances of the entire historical background the Court is referred to Dean Landis' testimony at folios 2264-2293. (See also the certificate of the British Ambassador [Ex. HH] declaring on the instructions of his government that the decision to aid Ibn Saud was motivated solely by the situation existing in the Middle East, and was reached *before* the time Jones spoke with the negotiators in Washington.)

And beyond this, there is no evidence that the Jones conversations were ever reported to London; the only evidence is that the British Foreign Office has no record that the question of aid to Saudi Arabia was ever linked in any way with the American loan (f. 3207).

Thus, not only was there no positive evidence; but, as Judge Conger wrote (f. 2256):

> "There is no indication or even a dream that what Mr. Jesse Jones said to them caused them [the British] to grant the $12,000,000."

Here, then, is a total failure of proof, both in the case plaintiff presented below and the totally different case he seeks to have reviewed by this Court.

III.

The alleged contract sued on by Moffett, incredible on the facts, is unenforceable under New York law in view of (a) his status as a corporate employee, (b) the relation of his employers to the defendant, and (c) their admitted interest in the subject-matter.

A. On Moffett's evidence alone, the contract was unenforceable under New York law.

For aught that appears in the petition and supporting brief, Moffett was a stranger to the defendant when he was allegedly retained to see the President.

Nothing could be farther from the facts, as they then stood.

Bahrein Petroleum Company, Ltd. ("Bahrein"), The California-Texas Company ("Cal-Tex") and defendant ("Aramco") were a joint venture of The Texas Company and Standard Oil Company of California (called "the parents"). Texas and Standard owned Bahrein and Aramco in equal shares. Bahrein owned Cal-Tex. Aramco had a concession for oil wells in Saudi Arabia, but no marketing organization and no substantial refining facilities. Bahrein had a few oil wells and a large, modern refinery on nearby Bahrein Island. Cal-Tex had tank ships and a marketing organization throughout the Near and Far East (ff. 47, 53, 182, 209, 666-7, 744-5, 1684-6).

Thus Cal-Tex needed the refined products of Bahrein, and Bahrein needed the crude oil of defendant Aramco.

The three companies were so operationally inte-

grated that there was a constant interchange of personnel. Moffett admitted this:

> "If you needed men, yes, you would go and get them from the various companies" (f. 639).

Moffett was an employee of Standard and a top official (Board Chairman) of Bahrein and Cal-Tex. He was made such by agreement of the parents when the joint venture was created in 1936. His function was to represent Standard, his previous employer, on the Bahrein and Cal-Tex boards. He was being paid $50,000 a year by Bahrein and $12,500 a year by each of the parents (ff. 209, 677-8, 681, 698-9). This was admittedly a full-time job (ff. 608, 629).

From 1936 until he resigned as a Standard employee in 1943 (f. 3047), Moffett constantly reported on the entire joint venture to the successive presidents of Standard. In his reports he drew no artificial distinction between the defendant and the rest of the venture. Habitually, he used the first person plural in discussing the defendant and its Arabian problems (*e. g.,* in Exs. L, N, O, P, Q, I). To illustrate:

> July 17, 1936: "*We* were most fortunate * * * in finding King Ibn Saud * * * willing to grant *us* the concession" (Ex. L).
>
> July 29, 1937: "* * * the British will not miss an opportunity to muddy up *our* concession if possible with the King * * *" (Ex. N).
>
> March 24, 1938: "I am particularly anxious to see *us* develop the Arabian production commercially * * *" (Ex. Q).

Even on July 22, 1941, while allegedly acting separately on defendant's behalf, he wrote to Jesse Jones on Cal-Tex's letterhead and as Chairman of its Board (Ex. I):

> "*Our* venture represents the only American company in Saudi Arabia * * *."

Beyond this, though allegedly acting separately and outside the scope of his regular employment, he charged his expenses totalling $2,800 on his six trips to Washington by signed vouchers addressed to Cal-Tex and paid by Cal-Tex (Exs. T-Y, inclusive).

King Ibn Saud's financial plight resulting from the war was not considered defendant's exclusive problem. The parents called a series of meetings in San Francisco, to which they summoned the fiscal and operating chiefs of all the companies: Texas, Standard, defendant Aramco, Bahrein and Cal-Tex (ff. 66, 648, 1611-13, 1693, 1896, 2150).

Then, says Moffett, came his special hiring. Hamilton of Standard and Davies of Aramco were the alleged emissaries. They came from San Francisco to New York to see Moffett without any appointment (f. 683) and "walked in cold" (f. 792).

We continue in Moffett's words:

> "They then said to me, would I be willing to see the President * * *.
>
> I stated to Mr. Davies that they both knew that I was not an employee or officer of the [defendant] and it did not come within the scope of my responsibilities, and that I would undertake it on the basis that I would be compensated * * *.

And I said, 'That is the only basis that I will approach the President on' " (ff. 251-2).

It was proved out of Moffett's mouth that this was a false disclaimer of responsibility. He had to admit:

1. That Bahrein then required 8,000 barrels of crude oil a day from the defendant (ff. 666-7).

2. That Bahrein's own crude production was being cut back in order to help the King by increasing production in Arabia (ff. 668, 755-9).

3. That the parents were then considering a complete stoppage of the Bahrein wells for the same pupose (ff. 759, 761, 1625, 3040-1).

4. That under Moffett's proposal to the Government of April 16, 1941 (Ex. A), Bahrein was to get the refining business and Cal-Tex the transportation (ff. 744-5, 1270).

5. That the resale limitations in that proposal were for the sole protection of Cal-Tex (ff. 750-4).

6. That thus, anything done about the King's financial problem affected the fortunes of Bahrein and Cal-Tex (ff. 762-4).

Moffett's exact testimony was this:

"Q. * * * don't you know * * * that if you shut down partly in Bahrein and increased royalties in Aramco that it affected the fortunes of Bahrein? A. It affected the fortunes of Bahrein, yes.

Q. * * * if you had had that in your mind when these two gentlemen came to you you would not have told them that you had not anything to do

with Aramco, or with this problem of the King's? * * * A. *I would not have said it at that time, no*" (ff. 762-4). (Italics ours.)

If his alleged statement to Davies and Hamilton were to be believed, Moffett's statement to them was based on a false statement of fact.

Apart from the conceded falsity of his statement, he could not however recover under the New York law.

The New York law on these facts is represented by such cases as *Keller* v. *American Chain Co.*, 255 N. Y. 94. An employee cannot recover on a contract with a third party for performing services owed to his employer, because the rendition of such services is not a valid consideration. (See also *Vanderbilt* v. *Schreyer*, 91 N. Y. 392, 400; *Petze* v. *Leary*, 117 App. Div. 829.)

The test of whether Moffett's trips to Washington were in the ambit of his duties depends on whether or not his employers were affected, not on what he says he said to Davies and Hamilton. Admittedly Moffett cut a Bahrein board meeting "on account of this being more urgent" (f. 623), and because the request to go to Washington emanated from the parent companies (f. 624).

Thus Moffett in serving the defendant was serving the companies he was being paid to serve and getting reimbursement from them for his expenses. He could not, under New York law, enforce a contract to be specially paid therefor if he ever made one.

B. The jury's finding of an agreement to pay Moffett under a special hiring was against the weight of the evidence.

We have shown that Moffett's story of his "hiring" is beyond belief when the test of admitted fact is applied to his alleged pretext for demanding special pay.

Defendant's evidence, moreover, showed that the alleged "hiring" never took place at all: Moffett learned of the problem through a routine office memorandum (Ex. B, which bore routing symbols [f. 3044], showing [f. 650] that Moffett was given a copy), discussed it in the normal course with Bahrein's president (f. 1618) and then went to Rodgers and volunteered to see President Roosevelt (ff. 1626, 1695-7).

Six* witnesses (Rodgers at ff. 1710-12, Davies at ff. 1906-8, Olmsted at ff. 2153-6, Stoner at ff. 2127-31, Herron at ff. 1626-32 and Collier at ff. 1845-7) testified, and contemporaneous records showed (Ex. MM, f. 2094) that on April 8, 1941, Moffett and Davies spent the entire day at a meeting at which his offer to approach the President was announced and discussed.

Thus it was logically and chronologically impossible to accept Moffett's story that he was ignorant of the King's demands until April 8 (ff. 284, 647), when (he says) Davies and Hamilton visited him privately, made the "contract" and sent him off to Washington without Rodgers or the others having anything to do with it (ff. 446, 647, 653-6, 662).

Moffett had no explanation whatever for the fact

* Hamilton had died (ff. 230, 275) and Thornburg was in the Middle East (ff. 231, 1703, 858).

that his first written report following his April 9 interview with the President (Ex. 6) was addressed to Rodgers and Herron, *not* to Davies and Hamilton who he claims hired him (see ff. 1042-3).

Defendant's evidence, if it showed nothing else, demonstrated that Moffett was fully aware of the involvement of Bahrein and Cal-Tex at the time of the alleged hiring.

Thus his admission that, with such knowledge, he could not have had the talk he claimed with Davies and Hamilton became an admission that he was never hired at all.

Hence the verdict was so fatally against the weight of the evidence that no judge could ever let it stand.

IV.

Public policy.

This point is in the nature of a demurrer. Contrary to the record, we here assume *arguendo* (1) that plaintiff had an *ad hoc* contract as though a stranger, (2) that his hiring was broad enough to include British aid, and (3) that he caused President Roosevelt (after allegedly disclosing to him his personal financial stake [f. 288]) to do whatever was necessary to enable Moffett to earn his commission on the deal.

Even on such assumptions, the public policy that would defeat petitioner raises no question of general importance because it involves a unique state of facts unlikely to arise again.

This is no case of an ordinary "five percenter" who seeks a commission for procuring government supply contracts.

This case involves a former officer of the Government allegedly asking a commission based on and measured by acts of state involving the national security and foreign policy, on the theory, openly avowed, that through his long-standing intimacy with the President of the United States *he* could *cause* the President to order a *sub rosa* diversion of public funds, not lawfully applicable to the purpose, for the benefit of a private corporation that had no legal or equitable claim on the Government therefor.

The District Court, looking only to Moffett's story of why he was allegedly hired, held the claim against public policy for the simple reason that acts of state are not commodities that can be sold for money (f. 3278).

The Court of Appeals affirmed on other grounds, and thus did not consider that question (p. 1107).

Though the issue thus may be irrelevant on certiorari, we brief it *ex cautela* and because the petition tries to raise it.

Moffett appraised the *quantum* of his meruit at $6,000,000 on the basis of the result allegedly accomplished (f. 1556), though he spent all told not over 30 days on the job (f. 1559).

For his full-time services, both Moffett and his employers thought $75,000 a year adequate.

How, then, did Moffett venture to ask the jury to measure his pay in this case at the rate of $200,000 *a day?*

The answer is found in every part of the record.

Thus Moffett's complaint alleged that he had "occupied high and important public office in the United States Government by appointment of the President of the United States" (f. 12).

Opening to the jury his counsel told of an intimacy

with Mr. Roosevelt dating from World War I; that Moffett later became a trustee of Georgia Warm Springs at Mr. Roosevelt's request; that the late President appointed him to represent the Government in connection with the NRA Oil Code; and then as Federal Housing Administrator (ff. 42-3).

Counsel said (f. 44):

> "And, two, I point out to you that Mr. Moffett was a *close personal friend of the late President Roosevelt,* a fact which will have some bearing upon the testimony * * *."

The "bearing" was, of course, on the alleged hiring. His counsel soon pointed out (f. 68):

> "* * * They asked Mr. Moffett if, *in view of his long-standing friendship with President Roosevelt,* would he go to Washington and lay the whole matter before the President and see if there was not some way in which the Government of the United States might take over the responsibility of financing Saudi Arabia * * *."

Moffett thoroughly embroidered this theme in his direct testimony by a long recital of his relations with the President from 1917 to 1941. He told the jury how he obliged Mr. Roosevelt by raising money in 1927 for the Infantile Paralysis Foundation (ff. 141-3); by advising him as Governor of New York on the gasoline tax (ff. 143-4); by advising him as presidential candidate (f. 145) and on January 2, 1941 (f. 237) on the oil situation (f. 145); and by advising him both as candidate and as President on foreign exchange, silver and the gold standard (f. 146).

He then told of his appointment to the NRA Code

Administration (ff. 149-53); how he served without pay thereon, though "fired" by the Standard of New Jersey (f. 152). He then told of his appointment as Housing Administrator (f. 169) and of his subsequent "roving commission" from the President, linked with his status as an officer in the Naval Reserve, to travel and report to the President on anything of interest (ff. 173-4). He was at pains to tell the jury of his continuing status as an officer in the Naval Reserve at the time of the trial (f. 175). He told of further meetings with the President culminating in an alleged conversation in 1941 about the East Indies and oil purchases by the Japanese (f. 237).

Throughout this recital he strove to dazzle the jury with his ready access to the White House, and to presidential secretaries and advisers, *e. g.*, Harry Hopkins, George Allen, Jesse Jones, "Steve" Early, "Colonel" McIntyre, General "Pa" Watson, "Missy" LeHand, etc. (ff. 239-41, 261-3, 326, 346, 358, 360, 363, 404, 428, 543-6). He dwelt at length on parties, intimate occasions and social events of various kinds, the large yacht he maintained, lavish entertainments he gave, and similar matters calculated to underline his intimacy (ff. 148, 237, 240, 263, 295, 346-7, 358, 362, 404, 495, 539, 543-7, 716, 727-30, 813).

To prove these intimacies would be no part of a suit for legitimate services. A man suing for services would prove what he did, not whom he knew.

But not Moffett.

According to him, he knew nothing about the problem at the time of the alleged hiring (ff. 67, 284, 647-8, 792), but that did not matter at all:

> "Q. Was anything said as to why they were picking you to go down? A. It was very appar-

> ent to me * * * the picture was that they knew that I knew the President * * *" (f. 792).

He thus denied drafting, and disclaimed responsibility for, all the documents sent to Washington (including those he signed), in which the companies forcefully presented their plea on the merits, *e. g.*, Ex. A (ff. 749-50, 807), Ex. I (ff. 486, 765-6, 807). His story was that he told the President merely what the company officers told him to say (f. 687); that in laying this matter before the Government he was acting as a "messenger boy" (ff. 802-6) or "errand boy" (ff. 813-14) or "lobbyist" (f. 1120); and that his proposal to the President was stated in a "very short time. It was merely a question of securing six million dollars a year for five years against future royalty payments, and he [the President] said, 'There is no existing legislation that would permit a loan or an advance of that character' " (f. 1047):

> "Q. And how long did it take you for you to state your proposal to the President and for him to say no * * *? A. * * * I didn't keep a time clock, whether it was a minute or two minutes" (f. 1045).

He made his point so thoroughly that Judge Conger was moved to say on the argument of the motions to set aside and dismiss (ff. 2847-8):

> "* * * he contributed very little except his friendship for people in high places to this problem, and the propositions he had were even written out for him * * * But, at any rate, there was no great mental effort about it. There were a few dinners, a few parties, meetings at cocktail par-

> ties, and I have nothing against that, of course, but, I mean, $1,150,000. for *that!*"

Judge Conger's comment was indeed a restrained one when he had before him Moffett's letter of August 5, 1941 (Ex. BB), wherein he wrote that he would see if he could not get the President to invite him socially (f. 3185):

> "* * * to see if he cannot turn the heat on Jesse [Jones] to finally do the job."

If, as this Court said in *Providence Tool Co.* v. *Norris,* 69 U. S. 45, 56:

> "* * * all agreements for pecuniary considerations to control the business operations of the government * * * are void as against public policy * * *"

a fortiori must be faced with horror the claim of a man for money *for "turning the heat on" a government official to influence and control the international policy of the United States.*

Beyond this, Moffett admittedly used a percentage in presenting his initial demand, and on the trial measured the amount of his claim on the basis of the result allegedly achieved (ff. 1214, 1545, 1583). Thus, the basis of the claim is essentially indistinguishable from a contingency. The result below was therefore inevitable by further reason of the rule which forbids a recovery, contingent on the result, where the services involved the procurement of governmental action on behalf of an employer who had no pre-existing right or claim against the government.

> *Gesellschaft fur Drahtlose Telegraphie* v. *Brown* (1935), 78 F. 2d 410, cert. den. 296 U. S. 618; (1939) 104 F. 2d 227, cert. den. 307 U. S. 640;

Ewing v. *National Airport* (1940), 115 F. 2d 859, cert. den. 312 U. S. 705;
Hazelton v. *Scheckels* (1905), 202 U. S. 71.

The vice inherent in contracts for compensation contingent on causing government officers to take action is not avoided by labelling the "hiring" as on a *quantum meruit* where the *quantum* is sought to be measured, as here, by the governmental action allegedly caused. (*Gesellschaft fur Drahtlose Telegraphie* v. *Brown, supra.*)

President Roosevelt himself frowned upon attempts to secure compensation contingent on the result achieved when mere orders for government supplies were involved. Thus, by his own executive orders immediately following the formal entry of the United States into World War II, the President outlawed the system of seeking government contracts through persons specially hired for the purpose, as expressly distinguished from persons regularly employed or maintained by the applicant.*

Plaintiff claimed that every governmental official from the President down had told him that there was no legal way for the United States to make the advances to Ibn Saud (ff. 70, 291, 376, 401, 403, 692-3, 1109, 2809).

Yet plaintiff would have this Court permit a jury to infer that the United States had surreptitiously, through the subterfuge of a Collateral Loan to Great Britain, made such illegal advances!

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* See Executive Orders 9001, Dec. 27, 1941, Title II, par. 5; 9023, Jan. 14, 1942; 9055, Feb. 10, 1942; 9056, Feb. 12, 1942; 9116, Mar. 30, 1942; 9219, Aug. 11, 1942; 9221, Aug. 15, 1942; 9233, Aug. 22, 1942; 9241, Sept. 1, 1942; 9253, Oct. 9, 1942; 9264, Nov. 5, 1942; 9519, Feb. 7, 1945.

No wonder, on hearing the motions to set aside and dismiss, that Judge Conger interrupted the concession of plaintiff's counsel "that there was no legal way" with the query (f. 2809):

> "You say there was no legal way. Do you mean that this was an illegal way?"

Policies of state are not saleable: the vice inherent therein is magnified when the price is sought to be measured by the result achieved through the conduct of an independent sovereign state, allegedly acting on a *sub rosa* request from our President, under the cloak of a Collateral Loan which "contains no reference to financial aid to Saudi Arabia nor any reference whatever to that country" (Ex. FF, f. 3203). This alone precluded recovery here.

The District Court went further (f. 3276):

> "I can't help but feel that *on plaintiff's story alone* he was chosen by his associates as a man, of course expert in the field, but by and large as much if not more for his close relation with the President; one who, if any one could, might obtain relief for the defendant and its associates in their hour of peril from the man who might be able to help them. In this connection I shall call attention to a bit of testimony given by plaintiff on cross examination:
>
> 'A. I believe that they were coming to me because they thought I could get them the help if it was possible.
>
> Q. Yes? A. And that I knew the President.
>
> Q. Yes. A. And was friendly with him, that he trusted me, that he had appointed me to represent the Government in an emergency on

> the oil—for the oil industry against the oil industry.'
>
> * * * *
>
> For professional services, of course, a just compensation may be recovered, but when they are blended and confused with those that are forbidden the whole is a unit and they perish together. * * * The taint lies in the stipulation for pay."

The nearest case on the facts is *Oscanyan* v. *Winchester Arms Co.*, 103 U. S. 261. Weaker than this case in that it involved a mere sale of goods instead of an alleged trafficking in state acts, it resembles this case in that Oscanyan, like Moffett, held an office of honor under his government (see ff. 173-175).

The Trial Court had dismissed on the opening of Oscanyan's counsel. This Court affirmed, saying:

> "He [plaintiff's counsel] dwelt upon and reiterated the statement of the fact which constituted the ground of the court's action in directing a verdict for the defendant, namely: that it was Oscanyan's influence alone which controlled the agent of the Turkish Government, and for the use of that influence the defendant had agreed to give the compensation demanded; that is to say, that, whilst an officer of the Turkish Government, the plaintiff had stipulated for a commission on contracts obtained from it through his personal influence over its agent" (p. 264).
>
> But, independently of the official relation of the plaintiff to his government, the personal influence which he stipulated to exert upon another officer of that government was not the subject of bargain

and sale. Personal influence to be exercised over an officer of government, in the procurement of contracts, as justly observed by counsel, is not a vendible article in our system of laws and morals, and the Courts of the United States will not lend their aid to the vendor to collect the price of the article. * * * This is true when the vendor holds no official relations with the government, though the turpitude of the transaction becomes more glaring when he is also its officer" (p. 273).

See also:

Trist v. *Child,* 88 U. S. 441, 450-4;
Lyon v. *Mitchell,* 36 N. Y. 235, 242;
McCallum v. *Corn Prod. Co.,* 131 App. Div. 617;
Rose v. *Truax,* 21 Barb. 361;
Sedgwick v. *Stanton,* 14 N. Y. 289, 294;
Cary v. *W. U. Tel. Co.,* 47 Hun 610, 613;
Burke v. *Wood,* 162 F. 533, 541;
Mills v. *Mills,* 40 N. Y. S. 543, 546;
Bradley v. *Amer. Radiator, etc. Corp.,* 6 F. R. D. 37, 38-9, affd. 159 F. 2d 39;
Restatement, *Contracts,* Sec. 559, Illustration 1.

Finally, we cite that the money loaned to Britain was provided by the RFC (f. 3202), and Moffett's claim that it was American and not British money that went to Saudi Arabia (f. 80). This contention, if true, would bring into play the RFC regulation forbidding contingent fees (4 Code of Fed. Reg. 86, 49) and thus bar recovery on familiar grounds (*Hardt* v. *Heller,* 72 F. Supp. 795, 801, mod. 171 F. 2d 644).

Conclusion.

The questions presented were correctly decided below and do not call for review by this Court. No conflict with the decision of any other court is involved. The petition should be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

JAMES A. MOFFETT,

Petitioner,

v.

ARABIAN AMERICAN OIL COMPANY, INC., formerly known as CALIFORNIA ARABIAN STANDARD OIL COMPANY, INC.,

Respondent.

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

The District Court and the Court of Appeals labored under a misapprehension as to the nature of the petitioner's claim.

The respondent's statement of the case and Point I of its brief stress the erroneous conclusion of both the District Court and the Court of Appeals that petitioner's claim depended upon his proving the existence of a condition in the British loan that the British were to take care of the financial requirements of King Ibn Saud out of the proceeds of the loan.

In reaching such a conclusion both the District Court and the Court of Appeals were laboring under a misapprehension as to the nature of petitioner's claim.

Paragraph Eighth of the complaint states:

> "On or about the 1st day of April, 1941 the defendant herein retained the services of the plaintiff to protect

its oil concessions in the Kingdom of Saudi Arabia and obtain relief for the defendant from the financial demands of the said King of Saudi Arabia, and promised to pay plaintiff the fair and reasonable value of his services" (Record, p. 13, fol. 15).

Petitioner never claimed, either in his pleadings or at the trial, that he was employed to obtain a condition in the British loan that the British must meet King Ibn Saud's financial requirements out of the loan. In fact, at the time that petitioner was employed by respondent, neither petitioner nor respondent knew anything about the impending British loan. Petitioner was employed to obtain relief for respondent in any way possible and the British loan was merely the vehicle selected by the United States Government to accomplish the purpose for which petitioner was employed.

Whether helping the Arabs financially was or was not a condition of the British loan is immaterial if, in fact, the British did what they did as a result of petitioner's efforts in Washington. Petitioner claimed and proved at the trial that as a result of his efforts in Washington the respondent obtained the relief for which it employed him. This was a question of fact for the jury and the jury's finding on it should not have been disturbed.

Notwithstanding the complaint and the proof, the District Court said, in its opinion, page 1083:

> "It is clear from the complaint, that plaintiff claims that as a result of his services, the government of the United States required the government of the United Kingdom of Great Britain, *as a condition of this loan* to assume the budget requirement of the Kingdom of Saudi Arabia for the duration of the war." (Italics ours.)

The Court of Appeals not only adopted the erroneous conclusion of the District Court on this point, but went further and said at pages 1107-1108:

> "Plaintiff *admits* that, in order to recover he had to prove that, as a result of his efforts, the United States, *as a condition of the loan* it made to the British government, required that government to assume the budget requirements of the King of Saudi Arabia." (Italics ours.)

Petitioner nowhere, at any time, either in his complaint or at the trial, claimed the existence of such a condition in the loan agreement, or admitted he must prove it in order to prevail.

Counsel for petitioner did say in the course of his summation:

> "So there may be no question about this, our claim is that as a result of Mr. Moffett's services in Washington the British were required to take out of that $450,000,000 loan whatever Ibn Saud needed and pay it over. That is our claim, and that is what we maintain was done; no two ways about it; (Folio 2565)."

This is a far cry indeed from an *admission* that in order to prevail petitioner must prove the existence of a condition such as is referred to by the District Court or the Court of Appeals in the loan agreement itself or a claim that the granting of the loan was conditioned upon a British agreement to take care of the financial requirements of King Ibn Saud.

Certainly, in view of all of the circumstances under which the British loan was negotiated, the jury was amply warranted in agreeing with counsel's argument in summation that the British were "required" to take care of the King's

financial requirements, not as a condition of the loan but because of the indisputable fact that the United States was the one source to which the British could look for additional aid in the future, and that a mere suggestion from the United States to the British at that time was more than sufficient to bring about the required result. The portion of counsel's summation quoted at page 4 of respondent's brief, means just that, and no more than that.

Nowhere in the entire record, does it appear that petitioner or his counsel, ever made the admission upon which the Court of Appeals predicated its decision. The only conceivable basis for Judge Frank's remark appears to be the statement of the District Court quoted above which is equally erroneous and without basis in fact.

The record is clear that petitioner was employed to obtain relief for respondent from the demands of King Ibn Saud; that petitioner rendered services in Washington in furtherance of his employment; that respondent did obtain the relief for which it employed petitioner and that petitioner is entitled to the verdict for the fair and reasonable value of his services as found by the jury.

Respectfully submitted,

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